

# Exhibit E

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

**JUN 24 2005**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**WAYNE BERRY,**

**Plaintiff - Appellee/Cross-  
Appellant,**

**v.**

**FLEMING COMPANIES, INC., aka  
Fleming Foods, Inc. aka Fleming; et al.,**

**Defendants - Appellees,**

**and**

**POST CONFIRMATION TRUST,**

**Defendant - Appellant/Cross-  
Appellee.**

**Nos. 05-15223  
05-15347**

**D.C. No. CV-01-00446-SPK  
Hawaii (Honolulu)**

**ORDER**

**Before: TASHIMA and THOMAS, Circuit Judges**

**The motion by Wayne Berry for an injunction pending appeal is denied.**

**The briefing schedule established June 16, 2005 shall continue to govern  
these cross-appeals.**

**JUN 27 2005**